



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NORTHEAST REGIONAL OFFICE

205B Lowell Street, Wilmington, MA 01887 • (978) 694-3200

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CERTIFIED MAIL

May 2, 2007

Richard A. Nylen, Esq.
Lynch DeSimone & Nylen, LLP
12 Post Office Square
Boston, Massachusetts 02109

Re: NEWBURYPORT - Solid Wastes/COR
Crow Lane Landfill
UAO-NE-07-4003
Litter Control Plan
Approval w/Conditions
FMF No. 39545

Dear Attorney Nylen:

The Massachusetts Department of Environmental Protection, Northeast Regional Office, Bureau of Waste Prevention, Solid Waste Management Section (the "MassDEP") and the Office of the Attorney General is in receipt of your letter dated April 25, 2007 describing the four point litter control plan ("Plan") that New Ventures Associates, LCC ("New Ventures") of Everett, Massachusetts proposes to implement at the Crow Lane Landfill in Newburyport, Massachusetts to control litter at the site. You submitted the Plan to MassDEP on behalf of New Ventures in response to the Unilateral Administrative Order, File No. UAO-NE-07-4003, (the "UAO") that the MassDEP issued to New Ventures on April 12, 2007. As you know, paragraph 14 of the UAO required that New Ventures:

- a. Immediately upon receipt of the UAO undertake measures to ensure that excessive amounts of litter do not leave the working area and inactive areas of the Facility and that wind-blown litter is routinely cleaned-up at the Facility. These measures shall include, without limitation: (i) the placement of tarps over inactive areas of landfill

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD Service - 1-800-298-2207.
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with exposed C & D Material, as required by the Preliminary Injunction; and (ii) the placement of tarps and/or a minimum of six (6) inches of soil over the exposed C & D Materials in active areas at the end of each working day.

- b. Within five (5) days of the date of the UAO, clean up wind blown litter observed on abutting properties and Crow Lane.
- c. Within seven (7) days of the date of the UAO, submit for the Department's review and approval a plan to control wind blown litter leaving the Facility.

The Plan does not provide for: the placement of cover or other measures to control the release of litter from active areas of the landfill; the routine inspection of the landfill and adjoining areas for litter; or the removal of litter from off-site property, if required, on a regular basis. In addition, the Plan proposes to replace tarps previously maintained on the inactive portions of the landfill with six (6) inches of soil cover. The tarps in the inactive areas of the landfill are required by paragraph 1 (j) of the Preliminary Injunction entered on October 20, 2006 in *Commonwealth of Massachusetts v. New Ventures Associates, LLC*, Suffolk Superior Court, Civil Action No. 06-0790 C as amended by order of the Court on November 1, 2006 and February 22, 2007 (the "Order"). In addition to controlling wind blown litter, tarp placement required by paragraph 1 (j) is necessary to minimize the infiltration of precipitation into C&D, thus reducing leachate generation, leachate breakouts, generation and releases of landfill gas, and the associated odors. The MassDEP does not believe that soil cover alone as proposed in the Plan will achieve this result. As a result, the Plan as proposed does not adequately control wind blown litter at the landfill while controlling the infiltration of precipitation into the C&D fines and residuals and is not approvable as presented. Therefore, in accordance with 310 CMR 19.043(1), the MassDEP approves the Plan subject to the following conditions:

- 1. New Ventures shall place and maintain not less than six (6) inches of soil that does not contain any C & D Fines and Residuals, solid waste, or litter on the inactive portions of the landfill. This requirement is in addition to the continued placement of tarps by New Ventures in these areas in accordance with paragraph 1(j) of the Order.
- 2. New Ventures shall place and maintain not less than six (6) inches of soil that does not contain any C & D Fines and Residuals, solid waste, or litter on active areas of the landfill at the end of each working day.
- 3. New Ventures shall inspect the landfill and off-site abutting areas at the beginning of each workday for litter and shall remove any excessive litter identified during this inspection by the end of that workday. The inspection(s) and the removal of the litter shall be recorded daily and that record shall be placed and maintained onsite in the facility's records. Such records shall be made available at the landfill to representatives of MassDEP upon request.

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This approval is also subject to the standard conditions of 310 CMR 19.043(5). This approval is issued pursuant to Massachusetts General Laws Chapter 111, Section 150A and section 310 CMR 19.037 et seq of the Massachusetts Solid Waste Regulations. In the event this approval conflicts with all or parts of prior plan approvals or permits issued pursuant to M.G.L. Chapter 111 Section 150A, the terms and conditions of this approval shall supersede the conflicting provisions of such prior permits or approvals. This approval does not convey property rights of any sort or any exclusive privilege. Also, MassDEP reminds you that this approval does not relieve you from the responsibility to comply with all other applicable state, federal, and local laws and regulations, or to comply with the Order including, without limitation, all tarp placement requirements of paragraph 1(j) of the Order.

NOTICE OF RIGHT TO APPEAL

New Ventures is hereby notified that it may within twenty-one (21) days file a request that this decision be deemed a provisional decision under 310 CMR 19.037(4)(b), by submitting a written statement of the basis on which New Ventures believes it is aggrieved, together with any supporting materials. Upon timely filing of such a request, the decision shall be deemed a provisional decision with an effective date twenty-one (21) days after the Department's receipt of the request. Such a request shall reopen the administrative record, and the Department may rescind, supplement, modify, or reaffirm its decision. Failure by New Ventures to exercise the right provided in this section shall constitute a waiver of New Ventures' right to appeal.

Appeal. Any person aggrieved by the issuance of this decision may file an appeal for judicial review of said decision in accordance with the provisions of M.G.L. c. 111, s. 150A, and M.G.L. c. 30A, not later than thirty (30) days following the receipt of the final decision. The standing of a person to file an appeal and the procedures for filing such appeal shall be governed by the provisions of M.G.L. c. 30A. Unless the person requesting an appeal requests and is granted a stay of the terms and conditions of the decision by a court of competent jurisdiction, the decision shall remain effective.

Notice of Action. Any aggrieved person intending to appeal this decision to the Superior Court shall first provide notice to the Department of their intention to commence such action. Said notice of intention shall include the Department file number and shall identify with particularity the issues and reasons why it is believed the decision was not proper. Such notice shall be provided to the Office of General Counsel of the Department and the Regional Director for the regional office which processed the application. The appropriate addresses to which to send such notices are:

General Counsel
Department of Environmental Protection
One Winter Street - 3rd Floor

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Boston, MA 02108

Richard J. Chalpin
Regional Director
Department of Environmental Protection
Northeast Regional Office
205 B Lowell Street
Wilmington, MA 01887

No allegation shall be made in any judicial appeal of this decision unless the matter complained of was raised at the appropriate point in the administrative review procedures established in those regulations, provided that a matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have been raised during such procedures or that matter sought to be raised is of critical importance to the environmental impact of the permitted activity.

If you have any questions please contact me at (978) 694-3299.

Sincerely,

**This final document copy is being provided to you electronically by the
Massachusetts Department of Environmental Protection.
A signed copy of this document
is on file at the DEP office listed on the letterhead.**

John A. Carrigan, Chief
Solid Waste Management Section

Certified Mail Number: 7006 2760 0000 4034 7648

JAC/jac

Cc: John Morris, Director
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